

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1763 of 1986

with

SPECIAL CIVIL APPLICATION No 1764 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HEIRS OF MAGANBHAI R PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 1763 of 1986  
MR JITENDRA M PATEL for Petitioners  
Mr. C.C,Bhalja, ASSTT. GOVERNMENT PLEADER for the Respondents.
2. Special Civil Application No 1764 of 1986  
MR JITENDRA M PATEL for Petitioners  
Mr. C.C,Bhalja, ASSTT. GOVERNMENT PLEADER for the Respondents

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CORAM : MR.JUSTICE KUNDAN SINGH

ORAL JUDGEMENT

These two petitions relate to different survey nos. being survey nos. 57/3 and 57/1 respectively of village Manjalpur, Ta and Dist: Vadodara but involve same questions, hence are being disposed of by this common judgment. In the present petitions, the petitioners challenge the order of the Collector, Vadodara charging premium under Section 43 of the Tenancy Act. The petitioners are the owners of the land stated above which was included in the town planning scheme and an agreement to sell was executed on 10.10.75 by the petitioner in favour of one Kalyanbaug Co-operative Housing Society Ltd. The Collector, Vadodara passed an order dated 6.2.76 subject to the following conditions.

1. The applicant has to apply for the permission of the Competent Authority under Section 65 of the Bombay Land Revenue Code within a period of six months from the date of getting possession.
2. The applicant has only to utilise the land for the purpose of construction of the house of its members. No other use can be made without obtaining previous sanction.
3. The land is to be used for the purpose of which it is given within a period of three years from the date of getting possession.
4. From the date of this permission, the parties have to execute a registered sale deed within a period of one month.
5. If the parties are holding excess land, then this permission would not come in the way of taking proceedings under the provisions of the Urban Land (Ceiling and Regulation) Act, regarding ceiling limit.
6. If there is a breach of any of the aforesaid conditions, then the permission would be cancelled automatically and the proceeding under Section 84-C of the Tenancy Act may be initiated.
7. Even, in future if it is found out that the property is sold at the lesser price, then this permission would not come in the way of the Government for taking steps."

2. The petitioners were in a hurry and they wanted to sell the property anyhow. Hence, they deposited premium on 26.3.81 under protest and they preferred Revision Application before the Revenue Tribunal. The Revenue Tribunal by its order dated

December, 1985 held that the land is of an old tenure and was there was no need to obtain permission from the Collector under Section 43 of the Tenancy Act. However, the Tribunal approved other conditions. It appears from the Collector's order that the Collector has charged the amount of transferring the land in question as per his previous order dated 25.3.81 to show that the said amount has been imposed by the Collector, keeping in mind certain standing orders of the State and the State being the sovereign owner of the lands, it was left to it to determine such amount in its discretion. In the instant case, it was not clear that price of the premium has been fixed under Section 43 of the Act treating the said land as new tenure land. That being so, the payment of such amount as the State Government may by General or special order determine and so the Tribunal has no authority or jurisdiction so far as the question of consideration of payment of such amount is concerned. The State Government or Collector or any other officer authorised by the State Government as the case may be, can levy such amount also under the provisions of the Bombay Land Revenue Code as incorporated in Section 73-B thereof before sanctioning the transfer.

The learned counsel for the petitioners placed on record a copy of the decision dated 4.10.96 of the learned Single Judge of this Court rendered in Special Civil Application Nos. 1761 and 1762 of 1986 wherein the matter regarding payment under Sections 43 and 73-B of the Act has been minutely considered and examined and it is held that the Tribunal rightly affirmed that section 43 of the Tenancy Act was not applicable and the land being an old tenure land, there was no reason to levy the amount of premium. However, the Tribunal was not right in partly confirming the untenable order of the Collector. It is also observed that the State is no doubt, sovereign but on the ground of sovereignty it cannot act or order in the way it likes. The State can exercise the powers flowing from the Constitution or from the laws in force. If there is no provision empowering the State to levy premium or tax or charges or fees or penalty or duty, it cannot under the guise of sovereignty, arbitrarily, levy the same. Such cardinal principle of Rule or Law has been lost the sight of the Tribunal and it fell into error in holding that the State being sovereign could levy the premium, if not under Section 43 of the Bombay Tenancy Act.

4. In the present case, the land has been held to be an old tenure land which is not covered under the Tenancy Act. Hence, the Tribunal was fully justified

in holding that the provisions of Section 43 were not applicable to the old tenure land in determining the premium. But in the present case also, the Tribunal has committed an error in holding that the State being sovereign, could levy premium even though the provisions of Section 43 of the Bombay Tenancy Act are not applicable. The view taken by the learned Single Judge in Special Civil Application No. 1762 of 1986 has been affirmed by the Division Bench in LPA No. 475 of 1997.

6. Thus, in the present case, the land being an old tenure land, no premium can be charged under Section 43 of the Act nor any charge can be made by the State Government being sovereign, if the provisions of Section 43 are not attracted. As the petitioners have already deposited the amount of premium on 26.3.81, they are entitled to get refund of the same.

7. The learned counsel for the petitioners further argued that the petitioners are also entitled for the interest on the amount of the premium which has already been deposited by the petitioners and for this purpose, he relied upon the judgment in the case of United India Insurance Co.Ltd. vs. MKJ Corporation reported in 1996(6) SCC, 428, in which the Supreme Court has observed as under :

"In common parlance, when the insured-respondent is deprived of the right to enjoy his money or invest the money in business, necessarily the loss has to be compensated by way of payment of interest by the insurance company..."

In the present case, the petitioners have voluntarily deposited the amount of premium under protest. Of course, they were not forced to deposit. Hence, in my opinion the petitioners are not entitled for any interest on the amount of premium deposited by them.

In view of the above discussion, both the petitions are allowed. The respondents are hereby directed to refund to the petitioners the amounts of Rs. 2,80,112.50 ps. and Rs.3,06,531.25 which have been paid by the petitioners as premium on 26.3.81, within a period of two months from the date of receipt of writ of this judgment. Rule is made absolute to the aforesaid extent in each petition. No order as to costs.

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